

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

URSULA MAYES, EVA PEP AJ, JAIME
EDMONDSON, JAIME MIDDLETON,
JENNIFER ARCHULETTA, RACHEL
KOREN, TIFFANY TOTH, and VIDA
GUERRA,

Plaintiffs,

- against -

SUMMIT ENTERTAINMENT
CORPORATION d/b/a GENTLEMEN'S
QUARTERS and PHILLIP TRICOLLA,

Defendants.

Case No. 16-cv-6533 (NGG)(ST)

AMENDED COMPLAINT

(Jury Trial Demanded)

Plaintiffs URSULA MAYES, EVA PEP AJ, JAIME EDMONDSON, JAIME MIDDLETON, JENNIFER ARCHULETTA, RACHEL KOREN, TIFFANY TOTH, and VIDA GUERRA (collectively, "Plaintiffs"), by and through their undersigned counsel, as and for their Amended Complaint ("Complaint") against defendants SUMMIT ENTERTAINMENT CORPORATION d/b/a GENTLEMEN'S QUARTERS and PHILLIP TRICOLLA (collectively, "Defendants"), respectfully allege as follows:

BACKGROUND

1. This is an action for damages and injunctive relief relating to Defendants' theft, alteration, and unauthorized publication of sexually suggestive images of Plaintiffs, each of whom are world renowned professional models, in order to promote their strip club, Gentlemen's Quarters ("Gentlemen's Quarters"), in Baldwin, New York.

2. As detailed below, Defendants' theft and unauthorized use of Plaintiffs' images, photos and likenesses (collectively, "Images") constitutes violation of section 43 of the Lanham Act, 28 U.S.C. § 1125(a)(1), which prohibits false or misleading use of a person's image for

purposes of advertising, and violation of New York's Deceptive Trade Practices Act (New York G.B.L. §349) which prohibits deceptive business practices.

3. In addition to the actual, punitive and exemplary damages set forth below, Plaintiffs likewise seek an Order from this Court permanently enjoining Defendants from using their Images to promote Gentlemen's Quarters, via any medium. Such an Order is particularly necessary in this action due to Defendants' flagrant and ongoing violation of Plaintiffs' privacy and publicity rights. Despite the fact that this action was filed more than three (3) months ago, and Defendants' prior counsel appeared in this action or about December 22, 2016 (Dkt. 5, 6), as of the date of this Amended Complaint many of the Images of Plaintiffs which Defendants have misappropriated remain published on Defendants' social media pages. (*See, e.g.*, Exhibits A-D, H).

JURISDICTION & VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiffs have stated claims under the Lanham Act, 28 U.S.C. § 1125(a)(1), and jurisdiction over Plaintiffs' state law claim pursuant to 28 U.S.C. § 1367.

5. As set forth immediately below, each Plaintiff is, and at all times relevant to this action has been, a professional model who resides within the United States.

6. According to publicly available records, defendant Summit Entertainment Corporation ("Summit") is a corporation formed under the laws of the state of New York, with a principal place of business located at 2151 Grand Avenue, Baldwin, New York 11510. According to publicly available records, defendant Phillip Tricolla ("Tricolla") is the principal of Summit.

7. Venue is proper in the United States District Court for the Eastern District of New

York because Nassau County is Defendants' principal place of business.

8. All parties have minimum contacts with Nassau County, a significant portion of the alleged causes of action arose and accrued in Nassau County, and the center of gravity for a significant portion of all relevant events alleged in this complaint is predominately located in Nassau County.

PARTIES

Plaintiffs

9. Plaintiff Ursula Mayes ("Mayes") is a well known professional model, and a resident of Orange County, California.

10. Plaintiff Eva Pepaj ("Pepaj") is a well known professional model, and a resident of Los Angeles County, California.

11. Plaintiff Jaime Edmondson ("Edmondson") is a well known professional model, and a resident of Pinellas County, Florida.

12. Plaintiff Jaime Middleton ("Middleton") is a well known professional model, and a resident of Harris County, Texas.

13. Plaintiff Jennifer Archuleta (a/k/a Jennifer Walcott) ("Archuleta") is a well known professional model, and a resident of Maricopa County, Arizona.

14. Plaintiff Rachel Koren ("Koren") is a well known professional model, and a resident of Los Angeles County, California.

15. Plaintiff Tiffany Toth ("Toth") is a well known professional model, and a resident of Orange County, California.

16. Plaintiff Vida Guerra ("Guerra") is a well known professional model, and a resident of Los Angeles County, California.

Defendants

17. According to publicly available records, defendant Summit is a corporation formed under the laws of the state of New York, with a principal place of business located at 2151 Grand Avenue, Baldwin, New York 11510. Summit operates Gentlemen's Quarters, a strip club located at 2151 Grand Avenue, Baldwin, New York 11510.

18. Upon information and belief, defendant Tricolla is a resident of the State of New York. Tricolla is identified by the New York State Liquor Authority as the principal of Summit. Upon information and belief, Tricolla, in his capacity as principal of Summit, maintains operational control over Gentlemen's Quarters, including all advertising relating thereto.

FACTUAL ALLEGATIONS

19. As set forth immediately below, each Plaintiff is an extremely well known professional model who earns her livelihood modeling and selling her Images to companies, magazines and individuals for the purpose of advertising products and services.

20. Plaintiffs' careers in the modeling industry place an extraordinarily high degree of value on their good will and reputation, which is critical in order to maximize their earning potential, book modeling contracts, and establish each of their individual brands. In furtherance of establishing, and maintaining, their brands, Plaintiffs are necessarily selective concerning the companies, and brands, for which they model.

21. Each of the Plaintiffs' Images was misappropriated, and intentionally altered, by one or more of the Defendants in order to make it appear that they worked at or endorsed Gentlemen's Quarters.

22. In the case of each and every Plaintiff, such appearance was false.

23. In the case of each and every image of Plaintiff which is the subject of this action, Defendants' misappropriation occurred without the Plaintiff's knowledge, consent or

authorization, at no point did any Plaintiff ever receive any remuneration for Defendants' improper and illegal use of their Images, and Defendants' improper, illegal and ongoing use of Plaintiffs' Images have caused each Plaintiff to suffer substantial damages.

Plaintiffs' Backgrounds and Careers

Ursula Mayes

24. Mayes is a well known model who has appeared in *Maxim*, *Vogue*, *Elle*, *In Style*, *Cosmopolitan*, *Marie Claire* and many other publications. On television, Mayes has appeared on *Deal or No Deal*, *Minute To Win It*, *The Tonight Show*, and *The Jay Leno Show*. Mayes has also appeared in commercial campaigns for many companies, including Coronet Diamonds, Volkswagen, Subaru, and Bacardi, and was the cover model and star of the video game, *Juiced 2: Hot Import Nights*.

25. That we know of, Mayes is depicted in the photos in Exhibit "A" to promote Gentlemen's Quarters on its social media pages. This Image depicts Mayes in a sexually suggestive Native American costume, along with two other similarly attired women. This Image, which, upon information and belief, was first published on a Gentlemen's Quarters' social media page on November 25, 2014 (*i.e.*, two (2) days before Thanksgiving that year), was published beside the copy: "Celebrate Thanksgiving with the guys tomorrow and Thursday, we have food, a relaxing lounge, premium cocktails and gorgeous female entertainers...what else do you need? 2151 Grand Avenue, Baldwin, NY." (Ex. A).

26. By publishing this Image of Mayes, in a Native American costume, beside the above-quoted Thanksgiving-related copy, Gentlemen's Quarters did not merely misappropriate Mayes' Image, and intentionally alter it, but did so with the intention of creating the false impression with the public and potential Gentlemen's Quarters' patrons that Mayes was one of the "gorgeous female entertainers" that was employed at Gentlemen's Quarters.

27. Mayes has never been employed at Gentlemen's Quarters, has never been hired to endorse Gentlemen's Quarters, has received no remuneration from Defendants for their unauthorized use of her Image, and has suffered, and will continue to suffer, damages as a result of same.

28. As of the date of this Amended Complaint, this Image of Mayes remains published on a Gentlemen's Quarters social media page. (*Id.*).

Eva Pepaj

29. Pepaj is a successful and highly in demand runway and high fashion model, who has appeared in many print campaigns, and commercials for products such as Diet Coke. Pepaj has also appeared in the films: *The Hand Off*, *Interior: Leather Bar*, *The Romp*, and on HBO's *True Detective*.

30. That we know of, Pepaj is depicted in the photos in Exhibit "B" to promote Gentlemen's Quarters on its Instagram page. This Image depicts Pepaj in a sexually suggestive outfit of green shorts, a green headband, socks that are white, green and orange (the colors of the flag of Ireland), and holding a black pot emblazoned with a shamrock. Another woman also appears in this advertisement, also in green shorts. This Image, which, upon information and belief, was first published on a Gentlemen's Quarters' social media page in or around the week before St. Patrick's Day, 2015, was published beside a Gentlemen's Quarters banner, listing the address and website for Gentlemen's Quarters, and above the copy: "Join us St Patrick's day doors open 6pm hot corn beef n cabbage buffet drink specials and of course all out hot girls performing live." (Ex. B).

31. The same Image of Pepaj, also beside a Gentlemen's Quarters banner, was subsequently published on a Gentlemen's Quarters social media page, this time above the copy:

“#stpattricks day party starts at 6pm FREE admission all night FREE hot buffet FREE Padrone #cigar and lots more. Don’t miss out on the first #party of the #summer #GQ #Baldwin #longisland #sexy #ladies #hotgirls.” (*Id.*).

32. By repeatedly publishing this Image of Pepaj -- wearing green shorts and headband, socks the color of the Irish flag, and holding a black pot with a shamrock -- above the above-quoted copy, Gentlemen’s Quarters did not merely misappropriate Pepaj’s Image, and intentionally alter it, but did so with the intention of creating the false impression with the public and potential Gentlemen’s Quarters’ patrons that Pepaj was one of the “hot girls” that was employed at Gentlemen’s Quarters.

33. Pepaj has never been employed at Gentlemen’s Quarters, has never been hired to endorse Gentlemen’s Quarters, has received no remuneration from Defendants for their unauthorized use of her Image, and has suffered, and will continue to suffer, damages as a result of same.

34. As of the date of this Amended Complaint, this Image of Pepaj remains published on a Gentlemen’s Quarters social media page. (*Id.*).

Jaime Middleton

35. Middleton is an, fitness model, businesswoman, nutritionist and spokeswoman, a graduate of Texas A&M University, a former NFL cheerleader, the winner of the World’s Fittest Model Competition, and the mother of two. Middleton has been the featured subject and cover girl on numerous fitness and women’s magazines, and is currently a full-time spokesperson for Bodybuilding.com. She has her own line of swimwear and a supplement line with Labrada nutrition, and over 2 million social media followers.¹

¹ In the modeling industry, the number of social media followers a model has is a strong indication of her popularity and, thus, earning potential.

36. That we know of, Middleton is depicted in the photos in Exhibit “C” to promote Gentlemen’s Quarters on its Twitter page. This Image, which, upon information and belief, was first published on or around January 5, 2015 (*i.e.*, during the National Football League season) depicts Middleton in a sexually suggestive football uniform beside the copy: “Watch #Football with us! We have huge TVs, comfy chairs& sexy women to entertain you during commercials #NFLPlayoffs.” (Ex. C).

37. By publishing this Image of Middleton in a football uniform beside the above-quoted copy, Gentlemen’s Quarters did not merely misappropriate Middleton’s Image, and intentionally alter it, but did so with the intention of creating the false impression with the public and potential Gentlemen’s Quarters’ patrons that Middleton was one of the “sexy women” employed at Gentlemen’s Quarters who patrons could expect would “entertain [them] during commercials.”

38. Middleton has never been employed at Gentlemen’s Quarters, has never been hired to endorse Gentlemen’s Quarters, has received no remuneration from Defendants for their unauthorized use of her Image, and has suffered, and will continue to suffer, damages as a result of same.

39. As of the date of this Amended Complaint, this Image of Middleton remains published on a Gentlemen’s Quarters social media page. (*Id.*).

Jaime Edmondson

40. Edmondson is a graduate of Florida Atlantic University, a former police officer and Miami Dolphins cheerleader, and the January 2010 *Playboy* Playmate of the Month. Edmondson was a participant in the competitive reality TV series *The Amazing Race 14*, has served as a sports blogger for Playboy online and co-host of Sirius Fantasy Sports Radio, and has

appeared in *The Bunny House* documentary, in the Trace Adkins video for “This Aint No Love Song” and various other television, print, radio and online outlets. Edmondson has two children with her fiancée, Major League Baseball superstar, Evan Longoria.

41. That we know of, Edmondson is depicted in the photos in Exhibit “D” to promote Gentlemen’s Quarters on its Instagram and Facebook pages. This Image depicts Edmondson in a sexually suggestive Green Bay Packers shirt, in front of a “Packers” banner. This Image, which, upon information and belief, was first published on a Gentlemen’s Quarters’ social media page on or about January 11, 2015 (*i.e.*, during the National Football League season), was published beside the copy: “It’s FOOTBALL SUNDAY!!! See all of the highlights from the comfort of our lounge and forget the Cheerleaders on TV, we have live sexy entertainers here just for you. #Football #Sunday #NFL #Hot #Cheerleaders #Highlights #Lounge #TV #Live #Sexy #Entertainers #GentlemensQuarters #Stripclub #MensClub #LongIsland.” (Ex. D).

42. By publishing this Image of Edmondson, in a Green Bay Packers shirt, beside the above-quoted copy, Gentlemen’s Quarters did not merely misappropriate Edmondson’s Image, and intentionally alter it, but did so with the intention of creating the false impression with the public and potential Gentlemen’s Quarters’ patrons that Edmondson was one of the “live sexy entertainers” employed at Gentlemen’s Quarters.

43. Edmondson has never been employed at Gentlemen’s Quarters, has never been hired to endorse Gentlemen’s Quarters, has received no remuneration from Defendants for their unauthorized use of her Image, and has suffered, and will continue to suffer, damages as a result of same.

44. As of the date of this Amended Complaint, this Image of Edmondson remains published on a Gentlemen’s Quarters social media page. (*Id.*).

Vida Guerra

45. Guerra is a Cuban-born actress and model who has been named *FHM*'s Model of the Year, and has appeared in music videos for artists such as Kanye West and Nelly. In addition to her appearances in *FHM* -- which voted her Number 26 in that its "Top 100 Sexiest Females" list -- Guerra has appeared in various other magazines, including *DUB*, *Smooth*, *Escape*, and *Open Your Eyes*. As an actress, Guerra has made multiple appearances on several Spanish language television programs, including, *El Gordo y la Flaca*, on Comedy Central's *The Chappelle Show*, in *National Lampoon's Dorm Daze 2*, and in commercials for various companies, including Burger King. Guerra also appeared in the video game "Scarface: The World Is Yours." In addition to her modeling and acting endeavors, Ms. Guerra has produced her own swimsuit calendars (and accompanying "behind the scenes" DVDs), as well as and a 2006 DVD entitled, *Vida Guerra: Exposed*. Guerra is in high demand as a spokeswoman for fitness equipment, and in television shows and movies, and has over 260,000 Instagram followers.

46. That we know of, Guerra is depicted in the photos in Exhibit "E" to promote Gentlemen's Quarters on its Facebook page. This Image which, upon information and belief, was first published on or about November 11, 2013, depicts Guerra in a sexually suggestive outfit, beside the copy: "Beg for Thanksgiving Forgiveness. Treat Yourself. Wednesday November 27th." Below the Image of Guerra is a Gentlemen's Quarters banner which reads: "6PM-4AM. Live Entertainment. Drink Specials." Beneath this banner is the following copy: "*Two Feature Shows *Complimentary Exquisite Lavish Buffet *Drink Specials *Special Raffle to Win VIP Dance *Opportunity to Win Lifetime GQ VIP Membership *All GQ Entertainers Will be Attending *Performances on All 4 Stages *VIP Prizes and Giveaways." (Ex. E).

47. By publishing this Image of Guerra in the weeks before Thanksgiving, advertising the Gentlemen's Quarters party the night before Thanksgiving, beside the copy, "Beg For Thanksgiving Forgiveness," Gentlemen's Quarters did not merely misappropriate Guerra's Image, and intentionally alter it, but did so with the intention of creating the false impression with the public and potential Gentlemen's Quarters' patrons that Guerra was one of the "GQ Entertainers" which were employed at Gentlemen's Quarters, and would be attending the advertised party.

48. Guerra has never been employed at Gentlemen's Quarters, has never been hired to endorse Gentlemen's Quarters, has received no remuneration for Defendants' unauthorized use of her Image, and has suffered, and will continue to suffer, damages as a result of same.

Rachel Koren

49. Koren is an internationally known and highly sought after model, who has walked runways for fashion shows in Miami's Mercedes Benz Fashion Week, filmed for travel TV show *Bikini Destinations*, shot for major campaigns in Los Angeles, and is the face of numerous major brands. Koren can be seen across the nation on billboards, buildings and bus stops in a campaign for MIDORI along with Kim Kardashian. As an actress, Koren has appeared in *Date Night*, with Steve Carell and Tina Fey, in *The Closer*, and many others. She has also appeared in campaigns for brands such as Nike, Reebok, Affliction Clothing, Volcom, Body Glove, Sinful, American Customs, Alo, Modern Salon Magazine, No Fear, Axe Body Spray, Paul Mitchell, Vibra Magazine, Launch Pad Magazine, Cut & Dry Magazine, Hairdo Magazine, Sunset Tan, Divine Boutique, Esquire Magazine, Vogue Magazine, True Religion, Jessica Simpson Swimwear, Ed Hardy, Christian Audigier, Smet, Rebel X Magazine, SNI Swimwear, Tommy Bahama, Roma, J Valentine, Sunsets Inc, B Swim, Love Culture, Maxim, Viva Glam Magazine,

Fantasy Lingerie, Elegant Moments, So Cal Swimwear, No Fear, Swim Magazine, American Honey, Have Faith Swimwear. She also owns her own company, Cashmere Hair Extensions, which appeared on ABC's *Shark Tank* in 2013. She has over 122,000 followers on Instagram.

50. That we know of, Koren is depicted in the photos in Exhibit "F" to promote Gentlemen's Quarters on its social media pages. These Images depict Koren in a sexually suggestive outfit, and were intentionally altered to make it appear that Koren was either a stripper working at a Gentlemen's Quarter, or that she endorsed the Club.

51. Such false appearance is bolstered by the copy that Gentlemen's Quarters published beside the Images of Koren. One Image of Koren is published on a Gentlemen's Quarters banner that reads: "Rollback Prices to the 90's. 30 Minute Champagne Rooms \$275. Ask Your Host for Details." (Ex. F).

52. Another Image of Koren is published on a Gentlemen's Quarters banner that reads: "Christmas Party Sensation. Indulge Yourself Thursday December 13th. 6PM-4AM. Live Entertainment. Drink Specials." This advertisement also includes the Gentlemen's Quarters address and website, www.Gentlemensquarters.com.

53. The publication of these misappropriated Images of Koren were intended to give the false impression to the public that Koren was part of the "Live Entertainment" at Gentlemen's Quarter, and/or was a stripper who was available in the Gentlemen's Quarters "Champagne Room" for a discounted price.

54. Koren has never been employed at Gentlemen's Quarters, has never been hired to endorse Gentlemen's Quarters, has received no remuneration for Defendants' unauthorized use of her Image, and has suffered, and will continue to suffer, damages as a result of same.

Tiffany Toth

55. Toth is an extremely successful model who was the September 2011 *Playboy* Playmate of the Month. Toth has also appeared in a variety of magazines including *Super Street Bike*, *Import Tuner*, *Sport Truck*, *Iron Man*, *Seventeen*, and *Maxim*, as well as appearing in countless other catalogs and publications. Toth's popularity and renown is evidence by the fact that she has over 2 million Facebook followers, over 700,000 Instagram followers, and over 100,000 Twitter followers. In addition to her Toth's modeling work, she owns and maintains her own e-commerce site.

56. That we know of, Toth is depicted in the photos in Exhibit "G" to promote Gentlemen's Quarters on its Facebook page. These Images depict Toth in various sexually suggestive outfits, and were intentionally altered to make it appear that Toth was either a stripper working at a Gentlemen's Quarter, or that she endorsed the Club. In one Image, a misappropriated Image of Toth was published to advertise a Super Bowl party at Gentlemen's Quarters, on a banner that read, *inter alia*, "Live Entertainment." Another misappropriated Image of Toth shows her, in a sexually suggestive outfit, standing in a pot of gold coins, in an advertisement for the Gentlemen's Quarters St. Patrick's Day Party. This advertisement reads, *inter alia*, "All GQ Entertainers Will be Attending." (Ex. G).

57. By publishing these Images, Gentlemen's Quarters did not merely misappropriate Toth's Image, and intentionally alter it, but did so with the intention of creating the false impression with the public and potential Gentlemen's Quarters' patrons that Toth was one of the "GQ Entertainers" and/or "Live Entertainment" which were employed at Gentlemen's Quarters, and would be attending the advertised party.

58. Toth has never been employed at Gentlemen's Quarters, has never been hired to

endorse Gentlemen's Quarters, has received no remuneration for Defendants' unauthorized use of her Image, and has suffered, and will continue to suffer, damages as a result of same.

Jennifer Archuleta

59. Archuleta is an American model, actress, and reality TV star, who was the *Playboy* Playmate of the Month for August 2001. She subsequently launched her own website, appeared in a variety of *Playboy* editions, was chosen by Carmen Electra to model for her celebrity guest photographer photo shoot on Playboy.com, and has appeared in music videos for the likes of Justin Timberlake, Sterophonics, and Marc Anthony. Archuleta has appeared on the cover of numerous magazines, including *Holistic Health*, *Moves*, *American Curves*, *Muscle & Fitness*, *Hers*, *Physical*, *Iron Man*, *VP Racing Fuel*, and many others. As an actress, Archuleta has appeared in *America Pie: Band Camp*, *The Pool Boys*, *Weakest Link*, *Street Smarts*, *Wild On!*, and *Ripley's Believe It or Not*. Archuleta currently lives in Arizona, where she is raising her three children with her husband, former NFL star Adam Archuleta.

60. That we know of, Archuleta is depicted in the photos in Exhibit "H" to promote Gentlemen's Quarters on its Instagram page. This Image depicts Archuleta in a sexually suggestive American flag bathing suit beside the following copy: "gqmensclub #4thofjulyweekend #independenceday #Fridaynight #finallyfriday #GQ #mensclubs #Showgirls #summer #shots #sexy #sexyladies #londisland #nightlife #nightclubs #bottleservice lots of #drinkspecials all night \$99 #bottles #241drinks don't miss out." (Ex. H).

61. This Image of Archuleta was not only misappropriated by Gentlemen's Quarters, but by publishing this Image beside the above-quoted copy, Gentlemen's Quarters was seeking to create the false impression with the public that Archuleta was one of the "Showgirls" and/or "sexyladies" that worked as a stripper at Gentlemen's Quarters.

62. Archuletta has never been employed at Gentlemen's Quarters, has never been hired to endorse Gentlemen's Quarters, has received no remuneration for Defendants' unauthorized use of her Image, and has suffered, and will continue to suffer, damages as a result of same.

63. As of the date of this Amended Complaint, this Image of Archuletta remains published on a Gentlemen's Quarters social media page. (*Id.*).

Defendants' Business

64. Upon information and belief, Summit operates Gentlemen's Quarters, where it engages in the business of selling alcohol and food in an atmosphere where nude and/or semi-nude women entertain the business' clientele.

65. Upon information and belief, and in furtherance of its promotion of Gentlemen's Quarters, Summit owns, operates and controls Gentlemen's Quarters' social media accounts, including the Gentlemen's Quarters' Facebook, Twitter, and Instagram accounts.

66. Summit uses the Gentlemen's Quarters' Facebook, Twitter, and Instagram accounts to promote Gentlemen's Quarters, and to attract patrons thereto.

67. Summit does this for its own commercial and financial benefit.

68. Summit has used, advertised, created, printed and distributed the Images of Plaintiffs, as further described and identified above, in order to create the false impression with potential clientele that these Plaintiffs either worked as strippers at Gentlemen's Quarters or endorsed Gentlemen's Quarters.

69. Summit used Plaintiffs' Images, and created the false impression that they worked at or endorsed Gentlemen's Quarters in order to receive certain benefits therefrom, including but not limited to: monetary payments; increased promotional, advertising, marketing, and other

public relations benefits; notoriety; publicity; as well as an increase in business revenue, profits, proceeds, and income.

70. As Summit was at all times aware, at no point has any of the above named Plaintiffs ever been affiliated with or employed by Gentlemen's Quarters and at no point have any of the Plaintiffs ever endorsed Gentlemen's Quarters.

71. All of Summit's activities, including its theft of Plaintiffs' Images, and publication of same, were done without the knowledge or consent of Plaintiffs, and Summit did not compensate Plaintiffs for its use of their Images.

72. As such, Plaintiffs have never received any benefit for Summit's use of their Images.

Standard Business Practices in the Modeling Industry

73. It is common knowledge in the modeling industry that the hiring of a model for a commercial purpose involves a particularized methodology and process.

74. The fee that a professional model, such as each of the Plaintiffs, will receive is negotiated by her agency, and involves consideration of, without limitation, at least the following factors: a) the reputation, earning capacity, experience, and demand of that particular model; b) the location where the photo shoot takes place, and the length thereof; c) where and how the images are going to be used by the client (*e.g.*, company website, social media, television commercials, billboards or posters), known as "usage"; and, d) the length of time (known as the "term") the rights to use the photos will be assigned. Most licenses to use a model's image are for 1, 2, or 3 year terms; but almost never is there a "lifetime" term.

Defendant's Theft of Plaintiff's Images

75. As detailed above, Defendants knowingly, and without the prior consent of any of

the Plaintiffs, invaded Plaintiffs' privacy by using Plaintiffs' Images for commercial purposes in order to promote their Club by and through various marketing and promotional mediums including, without limitation, the Clubs' Websites, Twitter, Facebook, and Instagram.

76. Defendants showcased Plaintiffs' Images on the Club's Websites and social media sites in order to create the false impression that Plaintiffs worked at one or more of the Clubs, or endorsed one or more of the Clubs.

77. Defendants did so in order to attract clientele to their Clubs, promote their Clubs, and thereby generate revenue for Defendants.

78. Defendants were aware that, by using Plaintiffs' Images, they were violating Plaintiffs' right to privacy, Plaintiffs' right of publicity, and creating a false impression to potential customers that Plaintiffs worked at and/or endorsed one or more of the Clubs.

79. Plaintiffs allege that any improper or unauthorized use of their Images substantially injures their careers. This is especially so insofar as each of Plaintiffs' Images have been associated with a strip club, and the implication of Defendants' use of Plaintiffs' Images is that they are each strippers.

80. At no point were any of the Plaintiffs ever affiliated with any of the Clubs, or Defendants.

81. Each of Plaintiffs' Images was used without her consent.

82. At no point was any Plaintiff ever contacted by any Defendant, or any representative of any of the Defendants, to request the use of any of Plaintiffs' Images.

83. No Defendant ever obtained, either directly or indirectly, permission to use any of Plaintiffs' Images.

84. No Defendant ever paid any Plaintiff for its use of her Images on any promotional

materials, including the Clubs' Websites, Twitter, Facebook, or Instagram accounts.

85. Defendants used Plaintiffs' Images without their consent, and without providing remuneration, in order to permanently deprive each of the Plaintiffs of her right to use her Images.

86. Upon information and belief, Defendants have taken the foregoing actions with the intent of causing irreparable harm to each of the Plaintiffs.

FIRST CAUSE OF ACTION
**(Violation of §43 of the Lanham Act, 15 U.S.C. §1125 *et seq.*:
False Endorsement)**

87. Plaintiffs hereby repeat and reallege each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

88. The provisions of the Lanham Act, 15 U.S.C. §1125, *et seq.* apply to Defendants, and protect Plaintiffs from the conduct described herein.

89. Defendants used Plaintiffs Images in order, *inter alia*, in order to create the false impression with the public that Plaintiffs either worked at one or more of the Clubs, or endorsed one of more of the Clubs.

90. This was done to promote and attract clientele to the Clubs, and thereby generate revenue for the Defendants.

91. Thus, this was done in furtherance of Defendants' commercial benefit.

92. Despite the fact that Defendants were at all times aware that the Plaintiffs neither worked at, nor endorsed, the Clubs, Defendants nevertheless used Plaintiffs Images in order to mislead potential customers as to Plaintiff's employment at and/or affiliation with the Clubs.

93. Defendants knew that their use of Plaintiffs' Images would cause consumer confusion as to Plaintiffs' sponsorship and/or employment at the Clubs.

94. Upon information and belief, Defendants use of Plaintiffs' Images did in fact cause consumer confusion as to Plaintiffs employment at and/or endorsement of the Clubs, and the goods and services provided by the Clubs.

95. Due to Defendants unauthorized use of Plaintiffs' Images in order to create a false endorsement prohibited by section 43 of the Lanham Act, Plaintiffs has been damaged in an amount to be determined at trial.

SECOND CAUSE OF ACTION
(Violation of N.Y. General Business Law § 349:
N.Y. Deceptive Trade Practices Act)

96. Plaintiffs hereby repeat and reallege each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

97. Defendants operated the Clubs' websites and social media accounts in order to promote the Clubs, to attract clientele thereto, and to thereby generate revenue for Defendants. As such, Defendants' operation of the websites and social media accounts, and their publication of Images thereon, was consumer-oriented in nature.

98. Defendants published Plaintiffs' Images on the Clubs' websites and social media accounts in order to create the false impression that Plaintiffs were either strippers working at the Clubs, or endorsed the Clubs.

99. As such, Defendants' intent in publishing Plaintiffs' Images was to mislead the public as to Plaintiffs' employment at and/or affiliation with the Clubs.

100. As Defendants were at all times aware, Plaintiffs never worked at any of the Clubs, never endorsed any of the Clubs, and never had any affiliation with any of the Clubs.

101. Defendants' publication of Plaintiffs' Images was done without any Plaintiffs' consent and was misleading in a material respect because it created the impression that Plaintiffs

were strippers working at the Clubs, or endorsed the Clubs.

102. As a result of Defendants' unauthorized and misleading publication of Plaintiffs' Images on their Club websites and social media accounts, each of the Plaintiffs' reputations was injured, and each of the Plaintiffs' ability to market herself as a model was injured.

103. As a result of Defendants' unauthorized and misleading use of Plaintiffs' Images, Plaintiffs have been injured in an amount to be determined at trial.

DEMAND FOR JURY TRIAL

104. Plaintiffs demand trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request Judgment in their favor and against Defendants as follows:

(a) For actual damages, in an amount to be determined at trial relating to Plaintiffs' first and second causes of action;

(b) For an order permanently enjoining Defendants from using Plaintiffs' Images to promote the Clubs;

(c) For punitive damages, in an amount to be determined at trial;

(d) For all costs and attorneys' fees incurred by Plaintiffs in the prosecution of this Action;

(e) For such other and further relief as the Court may deem just and proper.

Dated: New York, New York
March 1, 2017

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